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E. L. SORENSEN, JR.
 Executive Director

November 12, 1997

Re: Angostura bitters

Dear :

Your letter has been referred to me for reply. You have requested an opinion on whether the Alcoholic Beverage Tax applies (Rev. & Tax. Code §§ 32001 et seq.) to the sale of Angostura bitters. Based on the following discussion, the Alcoholic Beverage Tax does not apply to the sale of Angostura bitters.

The administration of the Alcoholic Beverage Tax Law¹ is closely related to the licensing of persons dealing in alcoholic beverages in the State of California. The tax (and surtax) is imposed on the "sale" of alcoholic beverages. The rates are set forth in three categories: distilled spirits, beer and wine (See Rev. & Tax. Code §§ 32151, 32201 and 32220). Therefore, whether or not the tax applies is dependent on whether a product is, by definition, a distilled spirit, beer or wine.

The definitions of beer, wine and distilled spirits are found in the Beverage Control Act (California Business and Professions Code beginning with § 23000) and include only those products which are alcoholic beverages, as defined in Business and Professions Code § 23004. Section 23004 provides:

Bus. & Prof. § 23003 "Alcoholic beverage." "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances (emphasis added).

According to the information we obtained from Angostura International Limited, we have determined that, despite its high alcohol content, Angostura bitters is commonly used in very small quantities as a flavoring and is too concentrated to be fit for consumption as a beverage. Given this determination, Angostura bitters is not "fit for beverage purposes" under the definition of an alcoholic beverage and cannot be a distilled spirit, beer or wine. Therefore, the sale of Angostura bitters is not subject to the Alcoholic Beverage Tax.

¹ For your convenience, I have enclosed a copy of the State Board of Equalization's pamphlet on the California Alcoholic Beverage Tax Law (Rev. & Taxation Code §§ 32001 et seq.), which includes the applicable sections of the Beverage Control Act found in the California Business and Professions Code.

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November 12, 1997

Page 2

I hope that this letter responds to your request. If you have any further questions or wish additional information, please feel free to write to me at the above address.

Sincerely,



Monica Gonzalez Brisbane
Tax Counsel

MGB:es

cc: (w/o encl.)

Mr. Monte Williams, Excise Taxes Administrator (MIC:56)

bcc: (w/o encl.)

Ms. Mary C. Armstrong

Ms. Janet Vining

Ms. Judy Nelson

Mr. Mark Walker (MIC:56)

Mr. Patrick Finnegan (MIC:56)